IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

Crl.Rev.Pet.No. 607 of 2000()

CC.226/1997 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD
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REVN. PETITIONER: DEFACTO COMPLAINANT

P.KRISHNA PRASAD,
S/O. NARASIMHA BHAT,
NELLITHADKA HOUSE, BAYAR VILLAGE,
P.O. BERIPADAVU, KASARAGOD DIST.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.JOJI VARGHESE
SRI.M.HARISHARMA
SRI.T.P.ELDHOSE

RESPONDENTS: (ACCUSED AND COMPLAINANT)
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1. **M.SUBBANNA BAHAT,**
S/O. N.KRISHNA BHAT,
RESIDING AT PONNENGALA,
BAYAR VILLAGE, P.O. CHIPPAR.

2. **THE STATION HOUSE OFFICER,**
MANJESHWAR POLICE STATION,
MANJESHWAR.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO. 607 OF 2000-A

DATED THIS THE 21ST AUGUST 2007

ORDER

The revision petition is filed by the de facto complainant seeking to set aside the decision of the court below discharging the accused under Section 239 Cr.P.C. The accused was the then President in the Bayer Service Co-Operative Bank Ltd.L-371 who has been charge sheeted for the offence under Sections 406, 420 and 477A of the Indian Penal Code on the allegation that he drew honorarium, at the rate of Rs.600/- per month, i.e., Rs.5700/- on 30-10—1994 for which there was no provision in the bye-laws. Subsequently he remitted the amount back. Later, on 30-4-1995 the bye-law permitting the President to draw honorarium was incorporated. The contention is that the offences under sections 406, 420 and 477-A I.P.C. is attracted as he withdrew the amount without having a provision for the same. The further allegation is that the entries made in the Minutes Book that 123 persons supported the amendment of the bye-law and only 21 persons voted against it. It is incorrect as about 133 persons had opposed the amendment and 123 alone supported the bye-law. The court below has noted that in the budget of the year 1993-94, Rs.1700/-is seen included as

proposed honorarium to the President. It was found by the court below that there was no dishonest intention which is the essential ingredient of Section 406 I.P.C. It was found that the accused has withdrawn the amount in anticipation of the approval of the amendment of the bye-law. It is also noted that the prosecution has not produced the bye-law. The allegation under section 477-A is not attracted as the accused is not a person, i.e. clerk, officer, servant etc. as contemplated under Section 477-A. It is also noted that it is open to the members to challenge the wrong noting of the abstention of the members before the Registrar of the Co-Operative Societies. The C.C.is of the year 1997. In the circumstances and in view of the findings of the court below and that the amount involved is not a substantial sum, I find that there is no merit in the revision petition filed. The same is dismissed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO. 607 OF 2000-A
ORDER

21-8-207